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-No. 90-1014

Supreme Court, U.S.

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In The  
**Supreme Court of the United States**

October Term, 1990

ROBERT E. LEE, ET AL.,

*Petitioners,*

v.

DANIEL WEISMAN, ETC.,

*Respondent.*

On Writ Of Certiorari To The United States  
Court Of Appeals For The First Circuit

**JOINT APPENDIX**

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**Petition For Certiorari Filed December 21, 1990  
Certiorari Granted March 18, 1991**

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## RELEVANT DOCKET ENTRIES

*Weisman, etc. v. Lee, et al.*

No. 89-0377B

United States District Court for  
the District of Rhode Island

6/16/89 Complaint

6/16/89 Affidavit of Daniel Weisman

6/26/89 Answer of Defendants

1/9/90 District Court Opinion (reprinted in Appendix B to  
the Petition For Writ of Certiorari at 18a-30a)

*Weisman, etc. v. Lee, et al.*

No.90-1151

United States Court of Appeals  
for the First Circuit

3/16/90 Brief and Appendix of Appellant

3/28/90 Brief of National Legal Foundation as Amicus Cur-  
iae in Support of Appellant

4/20/90 Brief of B'Nai B'Rith as Amicus Curiae in Support  
of Appellee

4/20/90 Brief of Appellee

5/10/90 Oral argument before Judges Campbell, Torruella,  
and Bownes

7/23/90 Court of Appeals<sup>4</sup> Opinion (reprinted in Appendix A  
to the Petition For Writ of Certiorari at 1a-17a)

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF RHODE ISLAND

DANIEL WEISMAN, personally and as  
next friend of DEBORAH WEISMAN

v.

C.A.No. 89-0377B

ROBERT E. LEE, individually and as  
principal of THE NATHAN BISHOP  
MIDDLE SCHOOL, et al.

AMENDED VERIFIED COMPLAINT

I. JURISDICTION

1. This is a civil action brought under 42 USC §§ 1983 and 1988 by Plaintiffs to secure injunctive relief against the inclusion of prayer in the graduation ceremonies held in and/or sponsored by the various public schools in the City of Providence and to secure declaratory judgment that inclusion of prayer in public school graduation ceremonies in the City of Providence violates First and Fourteenth Amendments of the United States Constitution, and Article 1, § 3 of the Rhode Island Constitution.

2. This Court has jurisdiction of the matter in controversy pursuant to 28 USC §§ 1331, 1343, 2201, and 2202, as well as this Court's pendent and ancillary jurisdiction.

II. PARTIES

A. PLAINTIFFS

3. Plaintiff DANIEL WEISMAN is now and at all times pertinent hereto has been a resident and taxpayer of the City of Providence, State of Rhode Island and the United States of America. Plaintiff regularly pays taxes which finance the operation of city schools.

4. Plaintiff DANIEL WEISMAN is the father and next friend of Deborah Weisman, age 14 who graduated from the

eighth grade at the Nathan Bishop Middle School in June, 1989, and who will attend Classical High School, a public high school in the City of Providence, in September, 1989.

B. DEFENDANTS

5. Defendant ROBERT E. LEE is now and at all times pertinent hereto has been the principal of the Nathan Bishop Middle School, and as such is the administrator of said school. Defendant ROBERT E. LEE is sued herein individually and in his official capacity.

6. Defendant THOMAS MEZZANOTTE is now and at all times pertinent hereto has been the principal of Classical High School, and as such is the administrator of said school. Defendant THOMAS MEZZANOTTE is sued herein individually and in his official capacity.

7. Defendant JOSEPH ALMAGNO is now and at all times pertinent hereto has been the superintendent of the Providence public schools, including but not limited to the Nathan Bishop Middle School and Classical High School, and as such is responsible for the overall administration of the Providence public schools and of the policies of the Providence School Committee. Defendant JOSEPH ALMAGNO is sued herein individually and in his official capacity.

8. Defendants VINCENT McWILLIAMS, ROBERT DeROBBIO, MARY BATASTINI, ALBERT LEPORE, ROOSEVELT BENTON, MARY SMITH, ANTHONY CAPRIO, BRUCE SUNDLUN, and ROBERTO GONZALEZ are now and at all times pertinent hereto have been members of the Providence School Committee and as such are responsible for the policies and operation of the Providence public schools, including but not limited to the Nathan Bishop Middle School and Classical High School. Defendants VINCENT McWILLIAMS, ROBERT DeROBBIO, MARY BATASTINI, ALBERT LEPORE, ROOSEVELT BENTON, MARY SMITH, ANTHONY CAPRIO, BRUCE SUNDLUN, and ROBERTO



GONZALEZ are sued herein individually and in their official capacity.

9. Defendants herein have at all times pertinent hereto been acting under color of state law.

### III. STATEMENT OF FACTS

10. The Providence School Department, acting as an agency of the City of Providence and the State of Rhode Island, under the authority and control of the Defendant members of the Providence School Committee are now and at all times pertinent hereto owners of the public schools located in the City of Providence and of all equipment located therein.

11. The Defendant members of the Providence School Committee and Superintendent of Schools sponsor, each year in the month of June, graduation ceremonies for the middle schools and high schools operated as public schools in the City of Providence.

12. The Defendant members of the Providence School Committee and the Superintendent of Schools allow, permit, authorize and/or direct, as part of their official policy, the various public schools in the City of Providence to include in their respective graduation ceremonies, invocations and benedictions in the form of prayer.

13. By information and belief, in accordance with the official policy of the Defendant members of the Providence School Committee and the Superintendent of Schools, some but not all of the public middle schools and high schools located in the City of Providence have included and continue to include invocations and benedictions in the form of prayer in their graduation ceremonies.

14. The graduation ceremony for the eighth grade class of the Nathan Bishop Middle School, which class included

Deborah Weisman, was held on the morning of June 20, 1989, on school grounds.

15. The graduation ceremony of the Nathan Bishop Middle School included an invocation and benediction in the form of prayer, performed by a Jewish rabbi.

16. By information and belief, the graduation ceremony of Classical High School, also held in June, 1989, on school grounds, likewise included an invocation and benediction in the form of prayer.

17. By information and belief, it is the policy and practice of Defendants to include an invocation and benediction in the form of prayer in the graduation ceremonies which take place each year at Classical High School.

18. By information and belief, graduating eighth grade students were expected to attend the graduation ceremony at Nathan Bishop Middle School.

19. Parents and friends of graduating eighth grade students of Nathan Bishop Middle School, and graduating twelfth grade students of Classical High School, are invited to attend the schools' graduation ceremonies.

20. Plaintiff DANIEL WEISMAN is opposed to and offended by the inclusion of prayer in the public school graduation ceremony of his child both at the middle school and the high school level.

21. Municipal and state tax funds are used to operate and maintain the Providence public schools and to fund their graduation ceremonies.

22. Plaintiff DANIEL WEISMAN is opposed to the expenditure of his tax funds for school ceremonies which include prayer.

23. Plaintiff has no adequate remedy at law and he and his child will suffer irreparable harm by the policy of Defendants to allow and/or authorize the inclusion of prayer in the Providence public school graduation ceremonies.

24. Defendants will not be harmed by the issuance of an injunction preventing the including of prayer in the Providence public school graduation ceremonies.

25. Plaintiff DANIEL WEISMAN is likely to succeed on the merits of his complaint, as is set forth more fully herein, and in the accompanying memorandum.

#### IV. FIRST CAUSE OF ACTION

26. Plaintiff DANIEL WEISMAN hereby incorporates paragraphs 1 through 25 above and for his first cause of action allege that the inclusion of prayer in the graduation ceremonies of the Providence public schools violates the Establishment Clause of the First and Fourteenth Amendments of the United States Constitution.

#### V. SECOND CAUSE OF ACTION

27. Plaintiff DANIEL WEISMAN hereby incorporates paragraphs 1 through 25 above and for his second cause of action allege that the inclusion of prayer in the graduation ceremonies of the Providence public schools violates Article 1, § 3 of the Rhode Island Constitution.

WHEREFORE, Plaintiff DANIEL WEISMAN prays:

1. For a declaratory judgment that the inclusion of prayer in the Providence public school graduation ceremonies violates the Establishment Clause of the First and Fourteenth Amendments of the United States Constitution, as well as Article 1, § 3 of the Rhode Island Constitution.

2. For a temporary and permanent injunction forbidding Defendants and all persons acting under or through them to

authorize or allow the inclusion of prayer in the Providence public school graduation ceremonies.

3. For reasonable attorneys fees and costs for the prosecution of the within action.

4. For such other and further relief as this Court deems just and proper.

Plaintiffs  
By his Attorneys

/s/ \_\_\_\_\_  
SANDRA A. BLANDING, ESQUIRE  
REVENS & DELUCA LTD.  
946 Centerville Road  
Warwick, RI 02886  
(401) 822-2900

Dated: 7/28/89

SANDRA A. BLANDING IS DESIGNATED AS TRIAL COUNSEL.

I, DANIEL WEISMAN, first being duly sworn, on oath, depose and say that I have read the foregoing complaint and that it is true to the best of my knowledge and belief.

/s/ \_\_\_\_\_  
DANIEL WEISMAN

[Jurat Omitted In Printing]

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF RHODE ISLAND

[Caption Omitted In Printing]

ANSWER OF DEFENDANTS TO  
AMENDED COMPLAINT

1. Defendants admit the allegation as stated in Paragraph 1 relative to jurisdiction.
2. Defendants admit the allegation as stated in Paragraph 2 relative to jurisdiction.
3. Defendants neither admit nor deny the allegation contained in Paragraph 3 and leave Plaintiff to his proof.
4. Defendants neither admit nor deny the allegation contained in Paragraph 4 and leave Plaintiff to his proof.
5. Defendants admit the allegation contained in Paragraph 5.
6. Defendants admit the allegation contained in Paragraph 6.
7. Defendants admit the allegation contained in Paragraph 7.
8. Defendants admit the allegation contained in Paragraph 8.
9. Defendants admit the allegation contained in Paragraph 9.
10. Defendants admit the allegation contained in Paragraph 10.
11. Defendants admit the allegation contained in Paragraph 11.
12. Defendants neither admit nor deny the allegation contained in Paragraph 12 and leave the Plaintiff to his proof.
13. Defendants neither admit nor deny the allegation contained in Paragraph 12 and leave the Plaintiff to his proof.

14. Defendants admit the allegation contained in Paragraph 13.
15. Defendants admit the allegation contained in Paragraph 14.
16. Defendants neither admit nor deny the allegation contained in Paragraph 16 and leave the Plaintiff to his proof.
17. Defendants neither admit nor deny the allegation contained in Paragraph 17 and leave Plaintiff to his proof.
18. Defendants neither admit nor deny the allegation contained in Paragraph 18 and leave the Plaintiff to his proof.
19. Defendants neither admit nor deny the allegation contained in Paragraph 19 and leave the Plaintiff to his proof.
20. Defendants neither admit nor deny the allegation contained in Paragraph 20 and leave the Plaintiff to his proof.
21. Defendants admit the allegation contained in Paragraph 21.
22. Defendants neither admit nor deny the allegation contained in Paragraph 23 and leave the Plaintiff to his proof thereof.
23. Defendants neither admit nor deny the allegation contained in Paragraph 23 and leave the Plaintiff to his proof.
24. Defendants neither admit nor deny the allegation contained in Paragraph 24 and leave the Plaintiff to his proof.
25. Defendants deny the allegation contained in Paragraph 25.
26. Defendants hereby incorporate their answers to Paragraphs 1 to 25 above and deny all other allegations contained in Paragraph 26.
27. Defendants hereby incorporate their answers to Paragraphs 1 through 27 above and deny all other allegations contained in Paragraph 27 of the Plaintiff's Complaint.

WHEREFORE, Defendants pray that Plaintiff's Complaint be denied and dismissed and that Defendants be



awarded judgment for Defendant, attorney's fees, interest and costs and such other and further relief as this Honorable Court deem just and proper.

Defendants,  
By their attorney,

/s/ \_\_\_\_\_  
JOSEPH A. ROTELLA, Esquire  
622 Charles Street  
Providence, Rhode Island 02904  
(401) 861-0012

[Certificate of Service Omitted In Printing]

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF RHODE ISLAND

[Caption Omitted In Printing]

AGREED STATEMENT OF FACTS

1. Plaintiff, DANIEL WEISMAN, is now and has been since 1981, a resident of the City of Providence, State of Rhode Island. Plaintiff, DANIEL WEISMAN owns and has owned since 1982, real property located within the City of Providence. Since 1981, Plaintiff, DANIEL WEISMAN has paid and continues to pay real and personal property taxes to the City of Providence.

2. Plaintiff, DANIEL WEISMAN is now and at all times pertinent hereto has been a citizen of the United States.

3. Plaintiff, DANIEL WEISMAN is the father of Deborah Weisman, age 14, who has attended and continues to attend the public schools owned and operated by the City of Providence. Deborah Weisman graduated from the eighth grade at the Nathan Bishop Middle School in June 1989, and now attends Classical High School. Both of the aforementioned schools are public schools owned and operated by the City of Providence and are within the jurisdiction of the Defendant Members of the Providence School Committee and

the Defendant Superintendent of Schools of the City of Providence.

4. The City of Providence uses and has used, at all times pertinent hereto, taxes raised from real and personal property located in the City of Providence to fund and operate the public schools located within the City, including the Nathan Bishop Middle School and Classical High School.

5. Defendant, ROBERT E. LEE is now and at all times pertinent hereto has been the principal of the Nathan Bishop Middle School, and as such is the administrator of said school.

6. Defendant THOMAS MEZZANOTTE is now and at all times pertinent hereto has been the principal of Classical High School and as such is the administrator of said school.

7. Defendant JOSEPH ALMANGO is now and at all times pertinent hereto has been the superintendent of the Providence Public Schools, including but not limited to the Nathan Bishop Middle School and Classical High School and as such is responsible for the overall administration and supervision of the Providence Public Schools and of the implementation of the policies of the Providence School Committee.

8. Defendants VINCENT McWILLIAMS, ROBERT DeROBBIO, MARY BATASTINI, ALBERT LEPORE, ROOSEVELT BENTON, MARY SMITH, ANTHONY CAPRIO, BRUCE SUNDLUN, and ROBERT GONZALEZ are now and at all times pertinent hereto have been members of the Providence School Committee and as such are responsible for the policies, operation, and supervision of the Providence Public Schools, including but not limited to the Nathan Bishop Middle School and Classical High School.

9. Defendants herein have at all times pertinent hereto been acting under color of state law.

10. The Providence School Department acting as an agency of the City of Providence and the State of Rhode Island, under the authority and control of the Defendant Members of the Providence School Committee, are now and



at all times pertinent hereto have been owners of the public schools located in the City of Providence and of all the equipment located therein.

11. The Defendant Members of the Providence School Committee and Superintendent of Schools sponsor, each year in the month of June, graduation and/or promotional ceremonies for the middle schools and high schools operated as public schools in the City of Providence, including the Nathan Bishop Middle School and Classical High School.

12. The Defendant Members of the Providence School Committee and the Superintendent of Schools are responsible for supervising and authorizing the content of the graduation and/or promotional ceremonies sponsored by the various public schools within the City of Providence.

13. The Defendant Members of the Providence School Committee and the Defendant Superintendent of the Schools are aware of permit, and have authorized the principals of the various public schools within the City of Providence to include invocations and benedictions in the form of prayer, delivered by clergy, in the graduation ceremonies of the various public schools in the City of Providence.

14. Defendant ROBERT E. LEE, principal of the Nathan Bishop Middle School, received, from Assistant Superintendent of Schools Arthur Zarrella, a document entitled "Guidelines for Civic Occasions" as a guideline for the type of prayer to be included in the graduation ceremony of the Nathan Bishop Middle School. A copy of the aforementioned "Guidelines" is attached as Exhibit A and by reference incorporated herein.

15. Assistant Superintendent Arthur Zarrella sent the same "Guidelines for the Civic Occasions," set forth above as Exhibit A, to the principals of all of the City of Providence public schools.

16. The graduation ceremony at the Nathan Bishop Middle School held in June, 1989, was planned by two teachers and employees of the Providence School Department, who suggested to Defendant ROBERT E. LEE that

Rabbi Leslie Y. Gutterman be asked to deliver the invocation and benediction at the June, 1989, promotional ceremony at the Nathan Bishop Middle School. Defendant ROBERT E. LEE accordingly requested Rabbi Gutterman to perform the same.

17. Defendant ROBERT E. LEE provided to Rabbi Gutterman a copy of the "Guidelines for Civic Occasions," set forth above as Exhibit A, and, in addition, spoke personally to Rabbi Gutterman to advise him that prayers that he gave at the invocation and benediction should be non-sectarian in nature.

18. Invocations and benedictions in the form of prayer have been included in some but not all of the graduation and/or promotional ceremonies of the high school and middle schools operated by Defendant Members of the Providence School Committee in prior years and during 1989.

19. From 1985 through 1989, graduation ceremonies of Central High School were held at Veterans Memorial Auditorium, which the Providence School Department rented for the occasion. During each of the aforementioned years, Central High School produced and distributed programs describing the graduation ceremony which include the following information: 1985 Invocation Reverend Raymond Tetreault, St. Michael's Church, Benediction Lucy Santa, St. Michael's Church; 1986 Invocation Reverend William Tanguay, St. Michael's Church, Benediction Lucy Santa, St. Michael's Church; 1987 Invocation Reverend Raymond Malm, St. Michael's Church, Benediction Lucy Santa, St. Michael's Church; 1988 Invocation D. Virgil A. Wood, Pond Street Baptist Church, Benediction Dr. Virgil A. Wood, Pond Street Baptist Church; 1989 Invocation Reverend Moises Mercedes, Star of Jacob Christian Church, Benediction Reverend Moises Mercedes, Star of Jacob Christian Church.

20. For the years 1985 through 1989, Classical High School produced and distributed programs of the graduation ceremonies which indicate the following: 1985 Invocation Reverend Daniel M. Azzarone, Assistant Pastor, St. Anne's Church, Providence, Benediction Rabbi Shalom Strajcher, Providence Hebrew Day School; 1986 Invocation Dr. Virgil

A. Wood, Pastor, Pond Street Baptist Church, Benediction Reverend Daniel M. Trainor, Pastor, Assumption of the Blessed Virgin Mary Church; 1987 Invocation Rabbi Daniel Liben, Temple Emmanuel, Benediction Reverend Patrick Soares, Assistant Pastor, Holy Name Church; 1988 Invocation Rabbi Leslie Gutterman, Temple Beth El, Benediction Reverend Dr. H. Lincoln Oliver, Olney Street Baptist Church; 1989 Invocation Rabbi Wayne M. Franklin, Temple Emanu-El, Benediction Reverend Robert Randall, Pastor, St. Sebastian's Church.

21. For the years 1985 through 1987 and 1989 graduation ceremonies of Hope High School were held at Veterans Memorial Auditorium, which the Providence School Department rented for the occasion. During each of the aforementioned years, Hope High School produced and distributed programs describing the graduation ceremony which include the following information: 1985 Benediction Dr. Daniel Brown; 1986 Invocation Reverend David Russ, Benediction Reverend David Russell; 1987 Invocation Reverend David Russell, God's Holy Tabernacle Church, Benediction Reverend David Russell; 1989 Invocation Reverend David Russell, God's Holy Tabernacle Church, Benediction Reverend David Russell.

22. For the years 1985 through 1988, Mount Pleasant High School held its graduation ceremonies at Rhode Island College. In 1989, graduation ceremonies for Mount Pleasant High School were held at Veterans Memorial Auditorium which the Providence School Department rented for the occasion. During each of the aforementioned years, Mount Pleasant High School produced and distributed programs describing the graduation ceremony which include the following information: 1985 Invocation Reverend Frederick J. Halloran, Pastor, St. Theresa's Church, Benediction Reverend Frederick J. Halloran; 1986 Invocation Reverend Frederick J. Halloran, Pastor, St. Theresa's Church, Benediction Reverend Frederick J. Halloran; 1987 Invocation Reverend Frederick J. Halloran, Pastor, St. Theresa's Church, Benediction Reverend Frederick J. Halloran; 1988 Invocation Reverend Marcel E. Pincince, Blessed Sacrament Church, Benediction Reverend

Marcel E. Pincince; 1989 Invocation Reverend Mario Bordignon, Pastor, St. Bartholomew's Church, Benediction Reverend Mario Bordignon, Pastor, St. Bartholomew's Church.

23. For the years 1985, 1986, 1988 and 1989, Samuel W. Bridgham Middle School promotional ceremonies were held on school property. During each of the aforementioned years, Samuel W. Bridgham Middle School produced and distributed programs describing the promotional ceremony which include the following information: 1985 invocation Father Peter Polo, Pastor, Holy Ghost Church; 1986 Invocation Reverend W.H. Johnson, Adventist Church; 1988 Reverend Clyde Walsh, St. Matthew's Church; 1989 Invocation Reverend W.H. Johnson, Adventist Church.

24. For the years 1983 through 1989, the Nathan Bishop Middle School promotional ceremonies were held on school property. During each of the aforementioned years, Nathan Bishop Middle School produced and distributed programs describing the promotional ceremony which include the following information: 1983 Invocation Father Patrick Soares, Holy Name Church, Benediction Father Patrick Soares, Holy Name Church; 1984 Invocation Reverend Earl Hunt, Benediction Reverend Earl Hunt; 1985 Invocation Reverend Bertrand Theroux, Benediction Reverend Bertrand Theroux; 1986 Invocation Reverend Robert E. Farrow, Benediction Reverend Robert E. Farrow; 1987 Invocation Rabbi Mark Jagolinzer, Benediction Rabbi Mark Jagolinzer; 1988 Invocation Reverend Dr. Lincoln Oliver, Benediction Reverend Dr. Lincoln Oliver; 1989 Invocation Rabbi Leslie Gutterman, Benediction Rabbi Leslie Gutterman.

25. During the years 1984, 1986, 1987 and 1989, Nathaniel Greene Middle School held promotional ceremonies on school property. During each of the aforementioned years, Nathaniel Greene Middle School produced and distributed programs of the promotional ceremonies which indicate that no invocations or benedictions in the form of prayer were included in the ceremonies.

26. During the years 1985 through 1989, Windmill Intermediate School held promotional ceremonies on school property. During each of the aforementioned years, Windmill



Intermediate School produced and distributed programs of the promotional ceremonies which indicate that no invocations or benedictions in the form of prayer were included in the ceremonies.

27. During the years 1983 through 1986 and 1989, Roger Williams Middle School held promotional ceremonies on school property. During each of the aforementioned years, Roger Williams Middle School produced and distributed programs of the promotional ceremonies which indicate that no invocations or benedictions in the form of prayer were included in the ceremonies.

28. During the years 1985 through 1989, the Oliver Hazard Perry Middle School held promotional ceremonies on school property. During each of the aforementioned years, Oliver Hazard Perry Middle School produced and distributed programs of the promotional ceremonies which indicate that no invocations or benedictions in the form of prayer were included in the ceremonies.

29. During the years 1985 through 1989, the Alternate Learning Project held graduation ceremonies on school property. During each of the aforementioned years, the Alternate Learning Project produced and distributed programs of the promotional ceremonies which indicate that no invocations or benedictions in the form of prayer were included in the ceremonies.

30. All of the aforementioned schools are public schools located within the City of Providence and within the jurisdiction of Defendant Members of the Providence School Committee and Defendant Superintendent of Schools.

31. Each of the aforementioned invocations and benedictions delivered during the graduation and/or promotional ceremonies were prayers.

32. During the time that the Defendant ROBERT E. LEE served as Assistant Principal at Hope High School, a public school operated by the Providence School Department in the City of Providence, from 1983 to 1988 prayers were included at all the graduation ceremonies at Hope High School.

33. During the time that the Defendant ROBERT E. LEE served as Assistant Principal at Central High School, a public school operated by the Providence School Department in the City of Providence, from 1976 to 1983 prayers were included at all the graduation ceremonies at Central High School.

34. Graduation and/or promotional ceremonies sponsored by the Providence School Department within the middle schools and high schools under the jurisdiction of the Defendant Members of the Providence School Committee and Defendant Superintendent of Schools are conducted either on school premises or in facilities which the school department rents, using tax funds. The school facilities themselves are owned by the City of Providence.

35. The graduation ceremony for the eighth grade class of the Nathan Bishop Middle School, which class included Deborah Weisman, was held on the morning of June 20, 1989, on the premises of the Nathan Bishop Middle School.

36. The graduation ceremony of the Nathan Bishop Middle School on June 20, 1989, included an invocation and benediction in the form of prayer, delivered by Rabbi Leslie Y. Gutterman. The contents of the aforementioned invocation and benediction are attached hereto as Exhibit B and by reference made a party hereof.

37. The graduation ceremony of Classical High School held in June, 1989, on the premises of Classical High School, also included an invocation and benediction in the form of prayer.

38. It is the practice of the Defendant THOMAS MEZ-ZANOTTE to include an invocation and benediction in the form of prayer in the graduation ceremonies that take place each year at Classical High School.

39. The graduation the promotional ceremonies held at the middle schools and high schools operated by the Providence School Department are supervised by employees and agents of Defendant Members of the Providence School Committee.



40. The invocations and benedictions delivered at the graduation and promotional ceremonies in the Providence public schools are delivered by members of the clergy chosen by agency of the Defendant Members of the Providence School Committee. These individuals are identified by name at the graduation and/or promotional ceremony at which they are speaking.

41. Attendance at graduation and promotional ceremonies is voluntary.

42. Parents and friends of students participating in promotional and/or graduation ceremonies at the Providence public schools are invited to attend the school's ceremonies.

43. Plaintiff, DANIEL WEISMAN, is opposed to and offended by the inclusion of prayer in the public school graduation and/or promotional ceremonies of his child both at the middle school and the high school level.

44. Municipal tax funds are used to operate and maintain the Providence public schools and to fund their graduation and/or promotional ceremonies.

45. Plaintiff, DANIEL WEISMAN, is opposed to the expenditure of his tax funds for school ceremonies which include prayer.

46. Some of the Providence public schools do not regularly include invocations and benedictions in the form of prayer in their graduation and/or promotional ceremonies.

47. Plaintiff, DANIEL WEISMAN, belongs to the Jewish faith.

48. Defendants have no plans to change their policy as to the inclusion of the invocations and benedictions in the form of prayer at the graduation and/or promotional ceremonies of the Providence High Schools and Middle Schools. Accordingly, it is probable that future graduation ceremonies at various Providence public schools will include invocations and benedictions in the form of prayer.

49. Defendants intend to continue to allow the inclusion of invocations and benedictions in the form of prayer at the

graduation and/or promotional ceremonies of the Providence public high schools and middle schools.

Plaintiff  
By his Attorneys

Defendants  
By their Attorneys

/s/ \_\_\_\_\_  
Sandra A. Blanding,  
Esquire  
Revens & DeLuca Ltd.  
946 Centerville Road  
Warwick, RI 02886  
(401) 822-2900

/s/ \_\_\_\_\_  
Joseph Rotella,  
Esquire  
622 Charles Street  
Providence, RI  
02903

## PUBLIC PRAYER IN A PLURALISTIC SOCIETY

### Guidelines for Civil Occasions

Spoken prayer is common on many civic occasions such as club meetings, legislative sessions, graduations, political rallies, testimonial dinners and community forums. Prayer in settings which are primarily secular should bind a group together in a common concern. However, it can become divisive, even if not intended, when forms or language exclude some persons.

Individuals who lead the general community in prayer have a responsibility to be clear about the purpose as well as the nature of the occasion. Prayer on behalf of the general community should be general prayer. General prayer is inclusive, non-sectarian and carefully planned to avoid embarrassments and misunderstandings. Those who are reluctant to offer general prayer should be given the option of declining an invitation.

General public prayer on civil occasions is authentic prayer that also enables people to recognize the pluralism of American society.

Prayer of any kind may be inappropriate on some civic occasions. Decision should show respect both for public diversity and for the serious nature of prayer.

### GENERAL PUBLIC PRAYER -

- . . . seeks the highest common denominator without compromise of conscience.
- . . . calls upon God on behalf of the particular public gathered; avoids individual petitions.
- . . . uses forms and vocabulary that allow persons of different faiths to give assent to what is said.

### APPENDIX A

### AGREED STATEMENT OF FACTS

- . . . uses universal, inclusive terms for deity rather than particular proper names for divine manifestations. Some opening ascriptions are "Mighty God," "Our Maker," "Source of all Being," or "Creator and Sustainer." Possible closing words are "Hear Our Prayer," "In Thy Name, Goodness Flourish," or, simply, "Amen."
- . . . uses the language most widely understood in the audience, unless one purpose of the event is to express ethnic/cultural diversity, in which case multiple languages can be effective.
- . . . considers other creative alternatives, including a moment of silence.
- . . . remains faithful to the purposes of acknowledging divine presence and seeking blessing, not as opportunity to preach, argue or testify.

These guidelines for inclusiveness and sensitivity on prayer should also apply to the content of meditations or addresses on civic occasions, and to the selection and performance of music.

### WHAT IS THE NCCJ?

The National Conference of Christians and Jews is an organization of people from different religious, racial and ethnic backgrounds learning to live together without bigotry or discrimination and without compromising distinctive faiths or identities. Founded in 1928, NCCJ promotes education for citizenship in a pluralistic society, and attempts to help diverse people discover their mutual self-interests on the common ground of democracy. NCCJ has 73 offices nationwide.

Public prayer in a pluralistic society must be sensitive to a diversity of faiths. Leading public prayer is both a privilege and a responsibility.

National Conference of Christians & Jews  
345 Blackstone Blvd., Hall Bldg.  
Providence, R.I. 02906

## NATHAN BISHOP GRADUATION

## INVOCATION

God of the Free, Hope of the Brave:

For the legacy of America where diversity is celebrated and the rights of minorities are protected, we thank You. May these young men and women grow up to enrich it.

For the liberty of America, we thank You. May these new graduates grow up to guard it.

For the political process of America in which all its citizens may participate, for its court system where all can seek justice we thank You. May those we honor this morning always turn to it in trust.

For the destiny of America we thank You. May the graduates of Nathan Bishop Middle School so live that they might help to share it.

May our aspirations for our country and for these young people, who are our hope for the future, be richly fulfilled.

AMEN

## APPENDIX B

## AGREED STATEMENT OF FACTS

## NATHAN BISHOP GRADUATION

## BENEDICTION

O God, we are grateful to You for having endowed us with the capacity for learning which we have celebrated on this joyous commencement.

Happy families give thanks for seeing their children achieve an important milestone. Send Your blessings upon the teacher and administrators who helped prepare them.

The graduates now need strength and guidance for the future, help them to understand that we are not complete with academic knowledge alone. We must each strive to fulfill what You require of us all: To do justly, to love mercy, to walk humbly.

We give thanks to You, Lord, for keeping us alive, sustaining us and allowing us to reach this special, happy occasion.

AMEN

---



UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF RHODE ISLAND

[Caption Omitted In Printing]

SUPPLEMENTAL AGREED STATEMENT OF FACTS

The Defendants have not specifically directed any of their agents to request clergy to deliver prayers at the promotional and/or graduation ceremonies sponsored by the Providence public schools.

Plaintiff  
By his Attorneys

/s/ \_\_\_\_\_  
Sandra A. Blanding,  
Esquire  
Revens & DeLuca Ltd.  
946 Centerville Road  
Warwick, RI 02886  
(401) 822-2900

Defendants  
By their Attorneys

/s/ \_\_\_\_\_  
Joseph Rotella, Esquire  
622 Charles Street  
Providence, RI 02903

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF RHODE ISLAND

[Caption Omitted In Printing]

TRANSCRIPT OF PROCEEDINGS IN ABOVE-CAPTIONED CASE BEFORE CHIEF JUDGE FRANCIS J. BOYLE.

APPEARANCES:

For Plaintiffs: SANDRA A. BLANDING, Esquire  
946 Centerville Road  
Warwick, Rhode Island

For Defendants: JOSEPH A. ROTELLA, Esquire  
797 Westminister Street  
Providence, Rhode Island

Court Reporter: Louis V. Spertini  
307 Federal Building  
Providence, Rhode Island 02903

TUESDAY, OCTOBER 10, 1989

MISS BLANDING: Your Honor, I have a memorandum I'd like to submit to the Court.

THE COURT: And do you want me to hear you or do you want me to read the memorandum, or what am I supposed to do at this point? You don't want me to do both certainly at the same time.

MISS BLANDING: No, your Honor. Your Honor put this on this morning, I think when we came before the Court last week, I had submitted a proposed agreed statement of facts to Mr. Rotella. Mr. Rotella told me this morning that there was one addition that he wanted made which we discussed, and he advises me now that he simply has to clear that with the Superintendent of Schools.

THE COURT: Go right in there to the telephone and call him.

MR. ROTELLA: Okay, your Honor. Your Honor, I also wanted to point out that we filed a memorandum.

THE COURT: I got that this morning, too.

MR. ROTELLA: Thank You.

THE COURT: I haven't had time to read that either. Maybe while you're making the phone call, I can read your memo.

MR. ROTELLA: Thank you, your Honor.

(PAUSE)

THE COURT: I'm sorry, I did read your memo, by the way.

MR. ROTELLA: My memo was very short.

THE COURT: Very brief.

MR. ROTELLA: It was very brief.

THE COURT: This one obviously I'm not going to be able to read without a very long pause.

MISS BLANDING: Those are the cases, your Honor, I'm not as verbose as the Supreme Court.

(DOCUMENT HANDED TO COURT)

THE COURT: Okay, you can go call.

(MR. ROTELLA EXITS COURTROOM - RETURNS)

MR. ROTELLA: Your Honor.

THE COURT: What did you find out?

MR. ROTELLA: We have an agreement on the agreed statement of facts. We will add this paragraph to clarify.

THE COURT: What is the paragraph you're adding?

MR. ROTELLA: The paragraph reads: "The Defendants have not specifically directed any of their agents to request

clergy to deliver prayers at the promotion and/or graduation ceremony sponsored by the Providence School Department."

THE COURT: Is that agreed to?

MISS BLANDING: Yes, your Honor.

THE COURT: All right. You have given him though the circular that tells them what kind of prayer they can say.

MR. ROTELLA: Yes, we have.

THE COURT: Okay.

MR. ROTELLA: But we haven't told them to deliver a prayer in that sense.

MISS BLANDING: Your Honor, the agreed statement of facts is typed up except for the exclusion of that paragraph.

THE COURT: All right, file that and you can just supplement it with that paragraph.

MISS BLANDING: Okay, your Honor.

THE COURT: All right, I'll hear you.

MISS BLANDING: Your Honor, other than the agreed statement of facts and the memorandum, we have no need to present additional testimony.

THE COURT: I'll hear you then.

MISS BLANDING: Your Honor, as your Honor is aware, this case was brought by a parent of a school child who is attending the Providence Public School System. Last year, Daniel Weisman's daughter was an eighth grade student at the Nathan Bishop Junior High School, and this year she is attending Classical High School. According to the agreed statement of facts, the School Department in Providence has allowed in the past invocation and benediction delivered by clergy to be offered at the promotional ceremonies of middle schools and the graduation ceremonies of the high schools.

Those invocations and benedictions, it is agreed to, to have been in the form of prayer. And last year, the Assistant Superintendent of Schools, Arthur Zarella, circulated to the Principals of each of the middle schools and high schools a circular which describes what's called in the circular non-sectarian prayer, and purports to advise what kind of prayer is appropriate for public ceremonies.

We have submitted as part of the agreed statement of facts the invocation and benediction which was delivered by Rabbi Gutterman at the Nathan Bishop Middle School last year. We have also submitted a list of the names and church affiliations of clergy as they were printed in programs and distributed by the various high schools and middle schools within the last several years. It's clear from the programs that were printed, and also as a part of the agreed statements of facts, that not all of the middle schools or all of the high schools have traditionally included invocations and benedictions in the form of prayer as part of their ceremony. It's our position that this practice has to be evaluated under the three-pronged *Lemon* test, and that in reviewing the prior court decisions, both in the Supreme Court and in the lower court, in light of that test, that the practice of the Providence School Department fails each prong of the *Lemon* test. There have been several cases that are cited in my memorandum that had said that prayer is inherently a religious activity and that the purpose of prayer can only be religious in nature.

THE COURT: What is prayer?

MISS BLANDING: Well, your Honor, a prayer, I believe in the amicus brief, there was a definition of prayer.

THE COURT: How about your definition of prayer?

MISS BLANDING: My definition of prayer would be anything that calls upon God in any way, either God's blessing or God's assistance or anything like that. A prayer is a request to a god or a higher being.

THE COURT: Suppose that Rabbi Gutterman said this: For the legacy of American where diversity is celebrated and the rights of minorities we are grateful to our fellow citizens, we thank you. May these young men and women grow up to enrich it for the liberty of America which we all join, we thank you. May those new graduates grow up to guard it. For the political process of America which all its citizens may participate, for its court system where all can seek justice we are grateful to our fellow citizens. May those we honor this morning always run to it in trust. Suppose he said that, would you have any objection to that?

MISS BLANDING: No, your Honor.

THE COURT: In other words, the only thing that you object to is an appeal to a deity.

MISS BLANDING: That's correct, your Honor.

THE COURT: Suppose he said: My fellow citizens, to each according to his needs, from each according to his abilities. Would you let him say that?

MISS BLANDING: Yes, your Honor.

THE COURT: Because it's communist doctrine and communism denies a deity, right?

MISS BLANDING: No, your Honor.

THE COURT: So you can preach communism at an invocation, but he can't refer to "in God we trust."

MISS BLANDING: I don't think there has ever been a Supreme Court case where the Court has allowed a preaching or a prayer or an invocation in a school setting to a deity. I think that all of the cases, all of the cases that the United States Supreme Court have decided suggest that when you're dealing with a public school setting, that it's necessary to be extremely careful and perhaps impose a more severe test than one would in any other circumstances because of the unique nature that the public schools fulfill.



THE COURT: Do you agree with the amicus brief that says inspirational secular speech is all right?

MISS BLANDING: Yes.

THE COURT: Okay, go out and win one for the Gipper, that's perfectly all right?

MISS BLANDING: Yes.

THE COURT: Okay.

MISS BLANDING: What we are objecting to is the School Department's allowance of a prayer to a higher being.

THE COURT: Do you see any prior restraint problem here?

MISS BLANDING: No, because what we are asking for, your Honor, is that right now I think it's clear from the circular that's been submitted to all of the Principals and that Mr. Lee has said that he gave to Rabbi Guttermann, that what the school expects is a prayer.

THE COURT: Okay.

MISS BLANDING: And that the school is sanctioning a prayer. What we would like is --

THE COURT: But you want them to send out a circular that says: Thou shall not pray.

MISS BLANDING: If the School Department is going to request individuals to give invocations and benedictions, I think it's necessary for them to make clear that they want it to be what the amicus brief said, a secular inspirational message and that prayer is not allowable in a public school setting. If the School Department did that, if they were enjoined from suggesting or in any way allowing or authorizing the inclusion of prayer in graduation ceremonies, then we would be satisfied with that.

THE COURT: What do we do if they have Joe Dokes who's a born-again Christian, who was asked to give the invocation or the benediction and he does mention God?

MISS BLANDING: I think, your Honor, if the School Department has made it clear to the individual that they are asking to give an opening inspirational message, that it cannot be a prayer, that that's all they can do, if they ask, if they ask an outside individual to deliver an opening statement --

THE COURT: Well, how about the situation now? Except for that circular, if they simply said to Rabbi Guttermann, can you show up next Wednesday night at 7:30 to open our graduation ceremony, and Rabbi Guttermann went there and gave the invocation that's indicated, can he do that?

MISS BLANDING: I think that, first of all, I think that the words invocation and benediction are ambiguous. I mean, to me if someone said "Will you give an invocation?" I would assume they meant a prayer because to me.

THE COURT: But you agree that an inspirational secular speech may be made?

MISS BLANDING: Yes, your Honor, but what I'm saying is --

THE COURT: Why can't you make an inspirational secular invocation?

MISS BLANDING: You can. What I am suggesting, your Honor, is that the word "invocation" I think means different things to different people. What my position is is that the School Department now, at the very least, has not made it clear, in fact they've gone the other way, they've made it clear that it is allowable to give prayers.

THE COURT: Suppose you have a School Committee composed entirely of lawyers.

MISS BLANDING: Mm-hmm.

THE COURT: Who said "Rabbi Gutterman, we want you to come to this graduation ceremony and make an opening and a closing statement." Do you have any problem with that?

MISS BLANDING: I think that -

THE COURT: And he gets up and he give this statement.

MISS BLANDING: I think that because of the past practice and because of general knowledge that prayers have been used in the past, that the School Department needs to do more than just say "We want you to make an opening and a closing." I think that they need to say it can't be a prayer. It can be an inspirational message, that that's what we would like, but it needs to be not a prayer.

THE COURT: And that's not a prior restraint?

MISS BLANDING: No, I don't think so, your Honor, any more than if you invited someone to deliver, to deliver an opening ceremony in a classroom, that you're going to tell them that they can't pray. I mean, if, certainly I doubt that the Supreme Court would uphold a situation where, for instance, that state said every morning we are going to take an outside agent into the school and ask him to deliver an opening message, and that opening message happened to be a prayer every single time.

THE COURT: That would be pretty obvious after a while, wouldn't it?

MISS BLANDING: Well, I think it's pretty obvious here, too. I think it's very obvious, that's been the practice. Each time it's clergy that are asked to deliver this. We have agreed that they are authorized and allowed and that it's been a past practice for them to deliver invocations and benedictions in the form of prayer. We've agreed to that.

THE COURT: And the Defendant says indeed that's the case, so it's all right, it's always been done.

MISS BLANDING: That's right, but it isn't always done because it's also clear from the agreed statement of fact that there are some schools, both at the middle school and the high school level, that do not include prayers in their graduation ceremonies. So, yes, it's been a past practice to allow it. Yes, it's been a past practice to authorize it. But is it universally done in the schools? No.

THE COURT: What do you think about the distinction that's made in the amicus brief that says *Marsh* doesn't apply here because public schools didn't exist at the time the Constitution was adopted, that public schools, that is, free public schools are a fairly recent historical development in terms of 200 years of constitutional history?

MISS BLANDING: I agree that *Marsh* doesn't apply here, but I'm not sure I would use the same reasoning.

THE COURT: You might have a problem with that reasoning, might you, because the fact of the matter is the history of the whole situation here is that the first public schools in this country, beginning with the founding of this country, and well beyond the establishment of the Constitution, were all religious in nature. That was the reason for them. They were religious schools, isn't that so?

MISS BLANDING: I don't know, your Honor.

THE COURT: I think if you look at the history, you'll find that to be the case. So if you make the argument, you could be in trouble.

MISS BLANDING: Even if that is the case, your Honor, I still don't think *Marsh* applies here for two reasons. One is that the case of *Edwards vs. Aquilar* was decided after *Marsh* and applied the *Lemon* test to a school situation. The United States Supreme Court has never applied the *Marsh* test to a school situation. The second is that in the *Marsh* case, the Court relied on the fact that the Legislature had always in the entire history of the country opened with a prayer. In this particular case, it's not even true that now every school opens

graduation ceremony with an invocation and benediction because even within the school system itself, that has never been the case and is not the case now. So there is not that kind of history that –

THE COURT: How about those who have been doing it, can continue to do it, and those who haven't done it, stop them from doing it?

MISS BLANDING: I don't think so, your Honor, but that's not the case. In any case, that's not the situation that is presently before the Court. I would take the position that *Marsh* does not apply to a public school setting. And even though this is not an actual classroom setting, it is certainly public school setting, and if you compare this to cases like *Jaeger*, for instance, when they are talking about invocations before football games, surely a graduation ceremony is much more important and significant in the life of a child than is a football game or a pep rally.

THE COURT: You're not a football fan, that's the problem with that argument.

MISS BLANDING: That's true, your Honor, or a school assembly.

THE COURT: You don't know how important it is to win that Thanksgiving Day game, all right?

(LAUGHTER)

MISS BLANDING: So I would submit, your Honor, some of the –

THE COURT: Some of them who will show up for the football game won't show up for the graduation, all right?

MISS BLANDING: I'm sure that's true, your Honor, I'm sure that's true. But it puts a real burden on students. I mean, the school has made a point of saying that graduation ceremonies are voluntary, and that's true, we have agreed to the fact. But it certainly puts a burden, an unfair burden, and I

think an unconstitutional burden, on a school child who does not wish to participate in a school-promoted activity that includes prayer to say you don't have to come to your own graduation if you don't want to. I have nothing further, your Honor.

THE COURT: Okay. Mr. Rotella.

MR. ROTELLA: Obviously, your Honor, if your Honor has read the brief that we've submitted in this particular matter, we take the position that *Marsh* is in fact, should be the test in this situation. I also point out in that brief the case of *Stein*.

THE COURT: Is that the Sixth Circuit?

MR. ROTELLA: That's the Sixth Circuit case, *Stein vs. Plainville Schools*.

THE COURT: There are other Circuits that go a different way.

MR. ROTELLA: Yes, there are other Circuits that go a different way, but most of those Circuits are dealing with activities that are not graduation ceremonies. They're dealing with football games.

THE COURT: What difference does it make if the graduation takes place in the Veterans Auditorium and not on the school grounds?

MR. ROTELLA: I'm not talking about the location, your Honor, I'm talking about the spirit of the thing itself, of the activity itself. In a football setting, you have a coach, these children are looking up to a coach. He is giving them an inspirational-type rah-rah.

THE COURT: That wasn't what was happening in that case though, was it? It was the coach who was giving the invocation.



MR. ROTELLA: But there were other individuals, they were selecting other individuals of the clergy who were out there.

THE COURT: They were clergymen for the most part.

MR. ROTELLA: Right, right. What I'm saying is the situation in its totality was a different situation than a graduation-type ceremony. When you look at *Marsh*, okay, when you look at, as I've pointed out in that brief that I've submitted, your Honor, there was a very interesting dissent done by Judge Rooney with regard to the – if I can just find it – in the *Jaeger* case, the football case, okay, where he basically looks at this and comes to a conclusion that says in effect there's a common thread. It says, "A common sense balancing of the danger of government establishment of religion with the recognition of religious traditions as part of our nation's fabric." The Court pointed out just a few minutes ago that the first public schools in the country were religious schools.

THE COURT: It's never meant anything in constitutional dimensions.

MR. ROTELLA: No, it has not.

THE COURT: For some reason or other. Why was Harvard University started, all right, you begin there. Brown University. But it's never meant anything in the constitutional dimension, even to those who look to the history of the Constitution look back to 200 years and say what did these people have in mind when they said establishment of religion.

MR. ROTELLA: Mm-hmm.

THE COURT: None of the cases tested against that historic background, that all of the schools were religious schools. That's what started them. They were started so that people could learn to read so they could read the Bible. That's what it was all about in the beginning. Free public schools are a Nineteenth Century development. But you don't see that in any of these cases. What you see in these cases is a pretty

consistent, remarkably consistent point of view from the Supreme Court that there shall not be prayer in the public schools. How do you get *Marsh* in the door on that one?

MR. ROTELLA: I think you get *Marsh* in the door by looking at the circumstances.

THE COURT: You can say anything else you want to say in the public schools, but you can't pray. That's the one thing you cannot do.

MR. ROTELLA: You can give a secular-type prayer, but not a prayer in the –

THE COURT: You can't call upon a deity. You can't make an appeal to a deity. Isn't that what all these cases say? Isn't graduation a part of the school process, so why is this constitutional?

MR. ROTELLA: I think the *Stein* Court breaks away from the mold. I think the decision in *Stein* looks at *Marsh* and says it has the same applicability to the schools.

THE COURT: But you have the situation where the school prayer cases, where a particular prayer is prescribed, that's not appropriate, a moment of silence is not appropriate. There's no praying to be done on the public school premises, period.

MR. ROTELLA: Then the same should hold true for Legislatures. The same should hold true for the opening court sessions. The same should hold true for all the other areas. I mean, the Supreme Court has drawn a line of demarcation. The line of demarcation says public schools are exempt and everyone else you can do it just a little bit. We walked in this morning and your Clerk gave an invocation that included the name of God, okay. If you've got a dollar bill in your pocket or a quarter or a dime in your pocket, it has the name of God on it. Why is it so –

THE COURT: The pledge of allegiance has God in it.

MR. ROTELLA: The pledge of allegiance has God.

THE COURT: Can you use that in school?

MR. ROTELLA: I think they did up until -

THE COURT: They did?

MR. ROTELLA: Yes, I think.

THE COURT: Do they still?

MR. ROTELLA: Yes, they do.

THE COURT: So God gets in there somehow.

MR. ROTELLA: The point that I'm trying, I think the point of the cases here, your Honor, are where do you draw the line of demarcation? Where do you say God is not allowable or the use of the word "God" or anything that relates to that is not allowable in the public schools? I think *Marsh* takes a look at it, *Lemon* takes a look at it and they set up a three-pronged test.

THE COURT: Doesn't the mention of God, or whatever, advance religion?

MR. ROTELLA: I don't see how. Why should it advance religion? Just because you mention the name "God," where does that advance religion, okay? If that be the case, then let's take it off the coin, let's take it out of the Legislature, let's take it out of the openings of court sessions and be done with it so that the next generation of children, okay, when they reach that point in time when a Court is opening, they can say, "We're all here, let's open it up and be done with it." Because that's where we're going as far as ceremonial prayer is concerned. We're going to that point where no mention of God means that pillars of the society that we have developed here over the past couple of years -

THE COURT: Whenever a Judge is sworn in here, we have an invocation and a benediction which is a prayer as defined.

MR. ROTELLA: When we have a swearing-in of a President, I believe they have it done on the Bible in most instances. The one I can remember most was President Johnson being sworn in in the airplane in Dallas in 1963. The point I'm trying to make, your Honor, is that I think, okay, there is a place for a ceremonial-type invocation and benediction. I think *Marsh*, in the *Marsh* decision, the Court has looked at the ability of someone to give an invocation at a legislative session, okay, and it's carried forward in *Stein* to apply to those particular-type ceremonial sessions that would be a high school graduation. Thank you, your Honor.

THE COURT: Anything else?

MISS BLANDING: No, your Honor.

THE COURT: I'm going to take the matter under advisement and we'll file a written opinion as soon as we can. Court will be in recess.

(PROCEEDINGS CONCLUDED)

I hereby certify that the foregoing, to wit, pages 2 through 22, is a true and correct transcript of proceedings had in above-captioned case.

/s/ \_\_\_\_\_  
Louis v. Spertini  
Official Court Reporter

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF RHODE ISLAND

[Caption Omitted In Printing]

**JUDGMENT**

1. The inclusion of prayer in the form of invocations or benedictions at public school promotion or graduation exercises in the City of Providence is unconstitutional in violation of the First Amendment of the United States Constitution.

2. The School Committee of the City of Providence, its agents or employees, are permanently restrained and enjoined from authorizing or encouraging the use of prayer in connection with school graduation or promotion exercises.

SO ORDERED.

ENTERED:

/s/

FRANCIS J. BOYLE, CHIEF JUDGE  
United States District Court  
District of Rhode Island

Dated: January 12, 1990

[Certificate Of Service Omitted In Printing]

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF RHODE ISLAND

**CLERK'S CERTIFICATE**

I, Frederick R. DeCesaris, Clerk of the United States District Court for the District of Rhode Island, do hereby certify that the foregoing contains all the original papers in the file dealing with the action or proceedings in which the appeal is taken and includes all the original papers as set forth in the Table of Contents herein.

Witness my hand and the Seal of said Court at Providence in said District, the 7th day of February A.D. 1990.

Frederick R. DeCesaris, Clerk

By: /s/ \_\_\_\_\_  
Deputy Clerk



UNITED STATES COURT OF APPEALS  
FOR THE FIRST CIRCUIT

DANIEL WEISMAN, etc.  
Plaintiff-Appellee

vs.

C.A. No. 89-0377B

ROBERT E. LEE, et al  
Defendant-Appellant

**NOTICE OF APPEAL**

Notice is hereby given that Robert E. Lee, et al., the defendants above-named, hereby appeal to the United States Court of Appeals for the First Circuit from the judgment entered in this action on January 12, 1990.

Robert E. Lee, et al.  
By their Attorney

/s/

Joseph A. Rotella, Esquire  
Legal Counsel  
Providence School Department  
797 Westminster Street  
Providence, RI 02903-4045

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UNITED STATES COURT OF APPEALS  
FOR THE FIRST CIRCUIT

No. 90-1151.

[Caption Omitted In Printing]

**JUDGMENT**

Entered: July 23, 1990

This cause came on to be heard on appeal from the United States District Court for the District of Rhode Island, and was argued by counsel.

Upon consideration whereof, it is now here ordered, adjudged and decreed as follows: The judgment of the District Court is affirmed.

Cost in favor of appellee  
are taxed at (\$63.00)

By the Court:

/s/

Clerk

By: /s/

Chief Deputy Clerk

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